

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0696

Affirmed
Benefits Allowed in Part, Denied in Part

PROCEDURAL HISTORY: On August 2, 2013, the Department issued administrative decision #94136, concluding that claimant was not eligible for the Self Employment Assistance (SEA) program for the period May 12, 2013 through August 3, 2013. Claimant did not request a hearing regarding that decision and it became final on August 22, 2013. On August 22, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was employed on a full-time basis and was not unemployed for the period January 27, 2013 through August 3, 2013 (decision #142207). On January 10, 2014, claimant filed a request for hearing. On January 24, 2014, ALJ Kangas issued Hearing Decision 14-UI-09135, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed. On February 1, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On February 26, 2014, OAH issued a document entitled "Cancellation of Hearing Decision." On March 25, 2014, OAH issued a notice of hearing scheduled for April 9, 2014. On April 9, 2014, ALJ Monroe conducted a hearing, and on April 15, 2014 issued Hearing Decision 14-UI-15228, allowing claimant's request for hearing, and modifying the Department's decision. On April 29, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party applied for review of that portion of Hearing Decision 14-UI-15228 allowing claimant's request for hearing. We therefore confine our review of Hearing Decision 14-UI-15228 to the issue of whether claimant was unemployed or partially unemployed during the period January 27, 2013 through August 3, 2013.

We considered the entire hearing record and claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant applied for and received unemployment benefits for the period January 27, 2013 through August 3, 2013 (weeks 05-13 through 31-13), the weeks at issue.

(2) In January 2013, claimant began preparations to operate his own metal manufacturing company. He registered the company and hired employees in February 2013. He purchased equipment and incorporated his business from February to May 2013.

(3) Claimant worked approximately three hours per week for his business during weeks 5-13 through 19-13. He worked forty hours per week for his business during weeks 20-13 through 31-13.

(4) No remuneration was paid or payable to claimant for the services he performed during weeks 5-13 through 21-13. For weeks 22-13 through 31-13, claimant received remuneration for his services.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was unemployed during the period January 27, 2013 through May 11, 2013 (weeks 05-13 through 19-13), and not unemployed during the period May 12, 2013 through August 3, 2013 (weeks 20-13 through 31-13).

The issue before EAB is whether claimant was “unemployed” under ORS 657.100 for the purposes of ORS 657.155(1). ORS 657.155(1) provides that an individual must be “unemployed” to be eligible to receive benefits with respect to any week claimed. ORS 657.100(1) provides, in relevant part, that an individual is deemed unemployed in any week during which the individual performs no services for which remuneration is paid or payable. ORS 657.100(2) provides, in pertinent part, that for purposes of ORS 657.155(1), an individual who performs full-time services in any week for an employing unit is not unemployed even though remuneration is neither paid nor payable to the individual for the services performed.

Claimant’s uncontroverted testimony at hearing was that he worked less than full time, for approximately three hours per week for his manufacturing business, and performed no services for which remuneration was paid or payable, for weeks 05-13 through 19-13. Transcript at 23, 24. Claimant was thus unemployed during that period. However, claimant worked forty hours per week for his business during weeks 20-13 through 31-13, and therefore was not unemployed during that period.

Claimant stated in his written argument to EAB that he was unemployed during weeks 20-13 through 31-13 because he participated in the SEA program during those weeks, and ORS 657.158(3)(c) provides that an individual participating in self-employment activities is considered to be unemployed under ORS 657.100. However, because the Department’s decision #94136 concluding that claimant was not eligible for the SEA allowance during weeks 20-13 through 31-13 became final, ORS 657.158 does not apply to the services claimant performed during the weeks at issue.

In conclusion, claimant was unemployed during the period January 27, 2013 through May 11, 2013 (weeks 05-13 through 19-13), and not unemployed during the period May 12, 2013 through August 3, 2013 (weeks 20-13 through 31-13). Claimant therefore is eligible for benefits for weeks 05-13 through 19-13, and not eligible for benefits for weeks 20-13 through 31-13.

DECISION: Hearing Decision 14-UI-15228 is affirmed.

Tony Corcoran and J.S. Cromwell, *pro tempore*;
Susan Rossiter and D. E. Larson, not participating.

DATE of Service: May 29, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.